

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NOTICE OF REMOVAL

Defendant Brett Jensen (“Jensen”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1334(b) and 1452(a) and Federal Rule of Bankruptcy Procedure 9027. The grounds in support of removal are as follows:

Background

1. On April 11, 2016, Plaintiff Howard Supply Company, LLC (“Plaintiff”) filed an Original Petition against Defendant Hamilton Well Service, LLC (“Hamilton Well”) in the 61st Judicial District Court of Harris County, Texas (the “State Court Action”). A true and correct copy of the Original Petition is attached to the Index in Support of the Notice of Removal (the “Index”) at Exhibit A. Plaintiff alleges that Hamilton Well failed to pay for goods which Plaintiff sold it on account. Plaintiff asserts a suit on sworn account against Hamilton Well, as well as causes of action for breach of contract and quantum meruit.

2. Subsequently, on May 20, 2016, Plaintiff filed a First Supplemental Original Petition against Jensen, who at all relevant times served as the CEO and Managing Member of Hamilton Well. A true and correct copy of the First Supplemental Original Petition is attached to the Index at Exhibit C. Plaintiff brings a claim against Jensen for common law fraud, alleging

that Jensen made material misrepresentations to Plaintiff in order to obtain additional goods for Hamilton Well.

3. On June 16, 2016, Hamilton Well filed a voluntary petition in the United States Bankruptcy Court for the Southern District of Texas for liquidation under Chapter 7 of Title 11 of the United States Code in the case styled *In re Hamilton Well Service, LLC*, Case No. 4:16-bk-33058. The following day, Hamilton Well filed a Suggestion of Bankruptcy in the State Court Action.

4. On August 5, 2016, Plaintiff nonsuited its claims against Hamilton Well.

Basis for Removal and Procedural Requirements

5. Removal is proper under 28 U.S.C. §§ 1334(b) and 1452(a) because Plaintiff's claims against Jensen in the State Court Action are related to Hamilton Well's bankruptcy. Specifically, Plaintiff seeks to hold Jensen liable for the full amount allegedly owed to Plaintiff for the goods sold to Hamilton Well. However, a contractual indemnification agreement between Hamilton Well and Jensen requires Hamilton Well to indemnify Jensen in connection with any third-party proceeding against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Jensen. Accordingly, the State Court Action relates to the bankruptcy case because Hamilton Well's indemnification obligation to Jensen could affect the bankruptcy estate. *See Arnold v. Garlock, Inc.*, 278 F.3d 426, 434 (5th Cir. 2001) ("Within the Fifth Circuit, the test for whether a proceeding properly invokes federal bankruptcy jurisdiction is . . . whether 'the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.'") (citations omitted)); *see also In re El Paso Refinery, LP*, 302 F.3d 343, 349 (5th Cir. 2002) (finding federal bankruptcy jurisdiction where a chain of indemnification provisions led directly to the debtor).

6. Venue is proper in this court because the state court where the suit has been pending is located in this district. *See* 28 U.S.C. § 1452(a).

7. Moreover, in addition to removing the instant State Court Action, Jensen is removing three other pre-petition civil actions filed in Texas state courts against Jensen and Hamilton Well. In those cases, as in this case, Jensen has been sued for conduct undertaken in the scope of his employment with Hamilton Well and, therefore, the indemnification agreement between Jensen and Hamilton Well applies to the claims alleged in all four cases. Thus, in the interest of promoting the economic and efficient administration of Hamilton Well's bankruptcy estate, Jensen respectfully requests that the above-referenced three matters be consolidated with the instant removed action in the court in which Hamilton Well's bankruptcy case is pending.

Those cases are:

- *Spill Containment Solutions, Inc. v. Hamilton Well Service, LLC, Brett Jensen, and Bobby Kelly*, Cause No. 2015-14052, in the 125th Judicial District Court of Harris County, Texas.
- *Maverick Oilfield Specialties, Inc. v. Hamilton Well Service, LLC and Brett Jensen*, Cause No. 2015-75540, in the 190th Judicial District Court of Harris County, Texas.
- *Michael W. Foster v. Hamilton Well Service, LLC and Brett Jensen*, Cause No. 15-09-78356-D, in the 377th Judicial District Court of Victoria County, Texas.

8. This Notice of Removal is timely filed within the period required by Federal Rule of Bankruptcy Procedure 9027(a)(2).

9. As required by Federal Rule of Bankruptcy Procedure 9027(a)(1), Jensen asserts that the removed claims are non-core proceedings within the meaning of 28 U.S.C. § 157(b)(2) and that Jensen consents to entry of final orders or judgment by the bankruptcy judge.

10. Pursuant to 28 U.S.C. § 1446(a) and Bankruptcy Local Rule 9027-1, Jensen attaches to this Notice of Removal true and correct copies of all papers that have been filed in the State Court Action, including: (i) all pleadings filed by the parties; (ii) all orders entered by the state court judge; (iii) the state court docket sheet; (iv) an Index of matters being filed for this Court's reference; and (v) a listing of the parties and their addresses, with a designation as to which defendants have been served, and a listing of counsel of record with contact information.

11. Jensen will promptly file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending.

Conclusion

For the foregoing reasons, Defendant Brett Jensen hereby removes Cause No. 2016-23016, now pending in the 61st Judicial District Court of Harris County, to the United States Bankruptcy Court for the Southern District of Texas.

Respectfully submitted,

By: /s/ Jarod R. Stewart

Jarod R. Stewart
State Bar No. 24066147
S.D. Tex. ID No. 1043011
SMYSER KAPLAN & VESELKA, L.L.P.
700 Louisiana St., Suite 2300
Houston, Texas 77002
(713) 221-2300
(713) 221-2320 (Fax)
jstewart@skv.com

ATTORNEY FOR DEFENDANT
BRETT JENSEN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record via electronic mail on August 17, 2016.

/s/ Jarod R. Stewart
Jarod R. Stewart